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KETUA PENGARAH HASIL DALAM NEGERI v. PULAI SPRING RESORT SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[CIVIL APPEAL NO: WA-14-35-07-2020]
B 11 NOVEMBER 2021

Abstract – *In an action for striking out, inexcusable delay in prosecuting the claim or appeal thereon can be decisive in sealing the fate of the plaintiff. Where the Director General of Inland Revenue ('DGIR'), after filing an appeal in July 2014 against the decision of the Special Commissioners of Income Tax, had sit on the appeal and had practically done nothing on it and not bothering even to follow up with the finalised case stated until June 2019, whereof it affirmed its intention to proceed with the appeal, then such inexplicable and inordinate delay must or must be deemed to have seriously prejudiced and caused serious financial hardship to the defendant taxpayer; it needs no emphasis that the DGIR's appeal ought to be struck off for want of prosecution.*

E ***CIVIL PROCEDURE:*** *Striking out – Want of prosecution – Appeal to High Court by Director General of Inland Revenue ('DGIR') against deciding order of Special Commissioners of Income Tax – Delay in expediting appeal process – Whether provided satisfactory explanation for inaction – Whether caused prejudice to taxpayer – Whether showed DGIR disinterested in appeal – Whether delay inordinate and inexcusable – Whether case stated satisfied statutory requirements – Whether abuse of court process – Whether appeal could be rendered incompetent and could be struck out*

REVENUE LAW: *Income tax – Additional assessment – Appeal against notice of additional assessment by taxpayer allowed by Special Commissioners of Income Tax ('SCIT') – Director General of Inland Revenue ('DGIR') appealed to High Court against SCIT's decision – Delay in expediting appeal process – Whether provided satisfactory explanation for inaction – Whether caused prejudice to taxpayer – Whether showed DGIR disinterested in appeal – Whether delay inordinate and inexcusable – Whether case stated satisfied statutory requirements – Whether abuse of court process – Whether appeal could be rendered incompetent and could be struck out*

The appellant issued notice of additional assessments for the years of assessment 1995 to 2002 against the respondent ('disputed notices'). The respondent appealed against the disputed notices. On 28 February 2014, the Special Commissioners of Income Tax ('SCIT') allowed the respondent's tax appeal in full. The appellant thus lodged a notice of appeal dated 1 July 2014 with the office of the SCIT ('notice of appeal') to appeal to the High Court by way of case stated. However, there was no follow up action by the

appellant. The respondent wrote to the office of the SCIT to enquire about the status of the draft case stated but no steps were taken by the appellant to pursue or expedite their appeal process to the High Court. On 22 March 2016, when the office of the SCIT circulated the draft case stated for comments, the terms of appointment of all three members of the SCIT who heard the appeal had expired and they could no longer sign the case stated before it was forwarded to the court. During the period between 22 March 2016 and 17 June 2016, counsel for the parties had submitted their respective comments on the draft case stated to the office of the SCIT. The respondent, on 12 October 2016, wrote to the SCIT requesting confirmation from the SCIT as to whether the case stated had been forwarded to the High Court. *Vide* a letter of 18 January 2019, the SCIT had inquired from the appellant whether they still intended to proceed with their appeal, to which the appellant confirmed their intention to proceed with the appeal. The respondent, pursuant to encl. 9 sought to strike out the appellant's appeal for want of prosecution submitting that the appellant's notice of appeal was incompetent as they had delayed and did not take steps to proceed with the appeal and they were seriously prejudiced and suffered irreparable damage. The respondent also contended that the case stated that was forwarded to the court in 2020 was not a valid case stated due to the lack of signatures of the three members of the SCIT panel who heard the appeal.

Held (allowing order in terms of encl. 9; striking out appellant's appeal for want of prosecution):

(1) The case stated is, in substance, the grounds of judgment of the SCIT. There is an obligation on the part of the appellant to pursue and procure the grounds of judgment from the court for it to be included in the appeal record. Although the appellant had lodged their appeal within the timeframe prescribed by the law, they did not take any steps to follow up with the status of the finalised case stated. The burden to provide a credible excuse on such inactivity was on the appellant. However, there was no justification or satisfactory explanation rendered on why they did not pursue on the final case stated. There was thus inordinate and inexcusable delay on the part of the appellant and, by letting the process takes its own course and nothing more, it was obvious that the appellant was disinterested in their own appeal. (paras 21-24, 29, 30 & 32)

(2) The case stated did not satisfy the statutory requirements provided under paras. 37 and 38 of Schedule 5 to the Income Tax Act 1967. The validity of the case stated was in question due to the lack of signatures of the three members of the SCIT panel who heard the appeal. The fact that the unsigned cases stated was subsequently compiled by another new SCIT member, who did not hear the appeal, in 2020 could not cure the lack of signatures of the three members of the SCIT panel who heard

A the appeal due to the mandatory nature of the provisions. Consequently, there was possibility that the appellant's appeal could be rendered incompetent and could be struck out. (paras 36 & 37)

(3) The obligation on the part of the appellant to pursue and procure the case stated was also for the reason that the respondent ought not to be B put in uncertainty for a long period of time even though the SCIT's decision was in the respondent's favour. Further, the taxes and penalties paid by the respondent were still being held by the appellant and this had prejudiced the respondent financially. Therefore, there was no merit in the appellant's argument that since the respondent had won the appeal C at the SCIT stage, the delay had caused prejudice to the appellant instead of the respondent. By filing the notice of appeal without following up on the case stated, the appellant had, in effect, used the court process to prolong the litigation knowing that they were still holding the respondent's monies. In the circumstance, there was abuse of the court D process. (paras 38, 39 & 43)

Case(s) referred to:

Allen v. Sir Alfred McAlphine & Sons Ltd [1968] 2 QB 229 ***(refd)***

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 CLJ 461 SC ***(refd)***

E *Birkett v. James [1978] AC 297* ***(refd)***

Confidence Concrete Sdn Bhd v. Shimizu-Peremba Sdn Bhd [1994] 3 CLJ 300 HC ***(refd)***

Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd [1997] 1 CLJ 396 CA ***(refd)***

Lee Mun Tuck v. Tan Chin Kah & Anor [1991] 1 CLJ 631; [1991] 4 CLJ (Rep) 929 ***(refd)***

Negara Properties Sdn Bhd v. Akitek Bersekutu, Malaysia (Sued As A Firm) & Ors [1996] 2 CLJ 923 HC ***(refd)***

F *Official Assignee Of The Estate Of Chen Chih Hsiung George, A Bankrupt v. Chi Man Kwong Peter [1995] 3 SLR (R) 847* ***(refd)***

Peak Hua Industries Bhd v. Peak Hua Holdings Bhd & Ors [2004] 1 LNS 703 HC ***(refd)***

Prolink Marketing Sdn Bhd v. CL Resources Sdn Bhd [2020] 1 LNS 1431 HC ***(refd)***

Te Cheng Hoi v. Peh Im Kweng [1994] 3 CLJ 501 HC ***(refd)***

G *Toh Hock Thye & Ors v. Toh Chwee Biow [1981] 1 LNS 143 FC* ***(refd)***

TP Guan Heng Sdn Bhd & Anor v. Loh Soo Chun [2020] 1 LNS 288 HC ***(refd)***

For the appellant - Mohammad Hafidz Ahmad; SRC & Nurul Amalina Mantaza; RC
For the respondent - Anand Raj, Foong Pui Chi, Abhilaash Subramaniam & Yeoh Yu Xian; M/s Shearn Delamore & Co

H *Reported by S Barathi*

JUDGMENT

Noorin Badaruddin J:

[1] Enclosure 9 is the respondent's application to strike out the appellant's I appeal against the deciding order of the Special Commissioners of Income Tax ("SCIT") dated 27 June 2014 for want of prosecution.

Background

[2] Towards the end of 2004 and in early 2005, the appellant issued notice of additional assessments for the years of assessment ("YAs") 1995 to 2002 against the respondent (collectively referred to as "disputed notices"). The respondent then appealed to the SC1T against the disputed notices.

[3] The hearing of the appeal had been set before the SC1T in 2009.

[4] The SCIT delivered their decision on 28 February 2014 allowing the respondent's tax appeal in full.

[5] The appellant then lodged a notice of appeal dated 1 July 2014 with the office of the SCIT on 5 July 2014 ("notice of appeal") to appeal to the High Court by way of case stated.

[6] Nothing was forthcoming until counsel for the respondent wrote to the office of the SCIT to enquire about the status of the draft case stated *vide* their letters of 4 December 2015 and 2 February 2016.

[7] No steps were taken by the appellant to pursue or expedite their appeal process to the High Court.

[8] Throughout that period, the terms of appointment of the three members of the SCIT panel who heard the respondent's appeal expired, with the term of the last SCIT member finally expiring on 14 March 2016.

[9] On 22 March 2016, eight days after the expiry of the term of the last SCIT member, the office of the SCIT circulated the draft case stated to counsels for the parties for their comments.

[10] During the period from 22 March 2016 to 17 June 2016, counsels for the parties submitted their respective comments on the draft case stated to the office of the SCIT.

[11] Thereafter, counsel for the respondent then wrote to the SCIT on 12 October 2016 requesting confirmation from the SCIT as to whether the case stated had been forwarded to the High Court. Again, it was the respondent's counsel who took steps to follow up on the status of the finalised case stated instead of the appellant.

[12] *Vide* letter of 18 January 2019 the SCIT had inquired from the appellant whether they still intend to proceed with their appeal. *Vide* letter dated 14 June 2019, the appellant replied confirming that they intend to proceed with the appeal.

A **Summary Of The Respondent's Contentions**

[13] Summarily it is the respondent's submission that the appellant's notice of appeal is incompetent as they had delayed and did not take steps to proceed with their appeal and this is said to have seriously prejudiced them. The respondent is further said to have suffered irreparable damage flowing
B from the appellant's inordinate delay.

[14] According to the respondent, the case stated that was forwarded to the court in 2020 is also not a valid case stated due to the lack of signatures of the three members of the SCIT panel who heard the appeal.

C **Summary Of The Appellant's Contentions**

[15] The appellant submits that the present application should be dismissed on the following grounds:

(i) Even if there is delay in the setting down of this appeal (which is
D denied), it was not caused by them;

(ii) Even if there is a default (which is denied), it is not intentional or contumelious;

(iii) There is no inordinate and inexcusable delay on the part of the
E appellant, and in any event;

(iv) It is the appellant who suffers the risk and prejudice in any delay in hearing of this appeal; and

(v) There is no peremptory order given by the court or the SCIT on the conduct of the appeal.

F **Findings**

[16] The principles on dismissal for want of prosecution were laid down in the case of *Birkett v. James* [1978] AC 297 where Lord Diplock had stated as follows:

G > **The power should be exercised only where the court is satisfied** either (1) that the default has been intentional and contumelious, e.g., disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2) (a) *that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give*
H > *rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants* either as between themselves and the plaintiff or between each other or between them and a third party. (emphasis added)

[17] The principles in *Birkett v. James* (*supra*) were adopted by the Federal Court in the case of *Toh Hock Thye & Ors v. Toh Chwee Biow* [1981] 1 LNS
I 143; [1982] 1 MLJ 152 where the court held:

> ... we propose for the purpose of this appeal to state the principle which would guide us in deciding this appeal to be thus – that the plaintiff's action is liable to be dismissed for want of prosecution when the court is satisfied that (1) the plaintiff's default has been intentional and contumelious or (2) **the plaintiff or his lawyer is guilty of such an inordinate and inexcusable delay that the defendant has been prejudiced by it** ... (emphasis added)

[18] In *Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd* [1997] 1 CLJ 396; [1996] 1 MLJ 223, Gopal Sri Ram JCA had held that:

> It is cardinal principle of law, that when a litigant seeks the intervention of the court in a matter that affects his rights, he must do so timeously. The maxims *vigilantus, non dormientibus, jura subveniunt*, though having its origins in the Court of Chancery, is of universal application. **Even in cases where a right is exercisable *ex debito justitiae*, a court may refuse relief to an indolent litigant.**
>
> **In all cases in which delay in approaching the court is in issue, the burden is upon the litigant who has delayed to render a satisfactory explanation for it.** Whether the explanation in a given case is satisfactory or reasonable depends upon the facts and circumstances of each case. And in a matter which involves the exercise of discretion, it is for the judge in whom the law primarily vests the discretion. (emphasis added)

[19] The Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 CLJ 461; [1995] 1 MLJ 241 also held that:

> An important maxim in regard to delay is that equity aids the vigilant, and not those who sleep on their rights; '*vigilantibus non dormientibus jura subeniunt'*.

[20] In contending that there are no inordinate and inexcusable delay on their part, the appellant submits that the only timeline that must be observed by them is for the appeal to be filed within 21 days from the date of the deciding order been served on them to which they said they have diligently adhered to. It is further contended that they had commented on the draft case stated as requested by the SCIT within the extended time allowed by the SCIT. According to the appellant, the law does not provide an avenue for them to rush the SCIT to issue the case stated urgently and that they are also a 'victim' of the delay.

[21] It is true that the appellant had lodged their appeal on 28 February 2014 within the timeframe prescribed by the law. However, they did not follow up with the status of the case stated after they have commented on it. The appellant is telling the court that as far as they are concerned there is nothing much they can do about the delay and that they have done their part. Not only that, they shift the blame on the SCIT. This can be seen from their affidavit-in-reply where they aver as follows:

> ... Memandangkan kedua-dua pihak iaitu Perayu dan Responden telah memberikan maklum balas masing-masing terhadap draf Kes Dinyatakan tersebut, maka ianya merupakan tugas PKCP untuk menentukan setiap maklumbalas yang diberikan kedua-dua pihak adalah wajar untuk dimasukkan ke dalam Kes Dinyatakan yang ingin dimuktamadkan.
>
> **Memandangkan tanggungjawab tersebut terletak pada PKCP, justeru Perayu tidak boleh dipersalahkan kerana tidak mendesak PKCP menjalankan tugasnya ...**
>
> Rayuan Perayu tidak seharusnya dihalang atas sebab kelewatan dan kegagalan PKCP sendiri dalam mengemukakan Notis Rayuan tersebut ke Mahkamah Tinggi. Kelewatan rayuan kes ini bukan atas kesilapan Perayu dan di luar bidang kuasa Perayu.
>
> Sekiranya Perayu dihalang daripada meneruskan rayuannya **atas sebab kelewatan yang dilakukan oleh PKCP** maka ianya akan memprejudiskan hak Perayu untuk merayu keputusan PKCP ini. (emphasis added)

[22] It must be remembered that after counsel for the parties had finally given their comments on the draft case stated, instead of the appellant, it was counsel for the respondent who wrote to the SCIT on 12 October 2016 requesting confirmation from the SCIT as to whether the case stated had been forwarded to the High Court. The appellant did not take any steps whatsoever to follow up on the status of the finalised case stated and their inactivity went on for more than two years (ie, from 17 June 2016 to 18 January 2019). In fact, due to the appellant's continued silence, the SCIT, *vide* their letter of 18 January 2019, had to ask them whether they still intend to proceed with their appeal.

[23] As stated earlier, all the appellant could say is that whatever that had transpired, they had done what they were required to do and nothing more can be expected of them. No justification or satisfactory explanation is rendered before the court on why they did not pursue on the final case stated except for saying that the law does not provide an avenue for them to rush the SCIT to issue the case stated urgently.

[24] The burden to provide a credible excuse lies on the appellant. On the facts, the appellant has failed to provide any credible explanation for their inaction. In the UK, the Court of Appeal in *Allen v. Sir Alfred McAlphine & Sons Ltd* [1968] 2 QB 229 has held that:

> ... that this inordinate delay is inexcusable. As a rule until a credible excuse is made out, the natural inference would be that it is inexcusable

[25] The above has been followed and applied by Malaysian courts. In *Peak Hua Industries Bhd v. Peak Hua Holdings Bhd & Ors* [2004] 1 LNS 703; [2005] 6 MLJ 266, Abdul Malik Ishak J held as follows:

> We would specifically refer to the propositions enunciated by Salmon LJ in *Alien v. Sir Alfred McAlpine & Sons Ltd* [1968] 2 QB 229, 245, 268 (at p 268) to the effect *inter alia* in relation to the inordinate delay being inexcusable that as a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable.

[26] Similarly, in *Confidence Concrete Sdn Bhd v. Shimizu-Peremba Sdn Bhd* [1994] 3 CLJ 300; [1994] 1 MLJ 465, the court held that "... unless a credible excuse is made out by the plaintiffs, the delay is inexcusable."

[27] In *Lee Mun Tuck v. Tan Chin Kah & Anor* [1991] 1 CLJ 631; [1991] 4 CLJ (Rep) 929; [1991] 2 MLJ 324 the court stated:

> I accept that in the present case the delay on the part of the plaintiff's previous solicitors in proceeding with the case was inordinate. Obviously, in order that such delay might be excused, it was essential for the plaintiff's solicitors to explain what had happened and to show, if they could, that the delay had not been inordinate or inexcusable. In the absence of such an explanation there would be no basis for the court to exercise its discretion in favour of the plaintiff.

[28] The Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 CLJ 461; [1995] 1 MLJ 241 also held that:

> An important maxim in regard to delay is that equity aids the vigilant, and not those who sleep on their rights; *'vigilantibus non dormientibus jura subeniunt'*.

[29] The case stated is in substance the grounds of judgment of the SCIT. As far as civil appeals are concerned, the obligation always lies upon an appellant to pursue and procure the grounds of judgment/written judgment from the court in order to include the same in the record of appeal. There is an obligation on the part of the appellant to pursue and procure the grounds of judgment from the court for it to be included in the appeal record.

[30] In filing the appeal against the deciding order of the SCIT, the appellant's conduct is akin to the appellants who had filed notice of appeal in civil cases where efforts to file the record of appeal must be taken up by the appellant therein. Likewise, in the present matter, it is for the appellant to take steps to ensure that the finalised case stated is obtained. Since no steps were taken by them to follow up on the status of the case stated which has caused the delay in the present matter for approximately five years and by letting the process takes its own course and nothing more, it is obvious that the appellant is disinterested in their own appeal.

[31] In *Te Cheng Hoi v. Peh Im Kweng* [1994] 3 CLJ 501; [1994] 2 MLJ 547, the High Court emphasised that an indolent plaintiff should not be tolerated in order to prevent injustice to the defendant. The court succinctly stated as follows:

> During the last decade, the English courts have become more willing to dismiss an action for want of prosecution, in the light of the above cases, it can be seen that Malaysian courts, like their English counterparts, are now also quite ready to strike down an inactive and dilatory plaintiff if he does not prosecute his case with due expedition. This salutary power of the court to dismiss cases for want of prosecution if exercised according to the principles laid down by the above-mentioned authorities, would help to reduce delays, clear the backlog of cases and conduct itself within the right side of the maxim that justice delayed is justice denied. *An indolent plaintiff should not be tolerated as this may cause injustice to the defendant in terms of the availability and usability of his important witnesses and documentary evidence.* (emphasis added)

[32] This court finds that from the facts, there is inordinate or inexcusable delay on the part of the appellant as there is no credible excuse made out. In the case of *Official Assignee Of The Estate Of Chen Chih Hsiung George, A Bankrupt v. Chi Man Kwong Peter* [1995] 3 SLR (R) 847, the High Court of Singapore explained what amounts to an inordinate delay in the following manner:

> whether a delay is or is not inordinate is a question of fact, to be decided on all the facts of the particular case. In *Tabata v. Hetherington The Times* (15 December 1983), Cumming-Bruce LJ defined "inordinate" *to mean a period of time which had elapsed and was materially longer than the time which is usually regarded by the profession as an acceptable period of time. As a general rule, the natural inference that arises with respect of an inordinate delay is that it is inexcusable until a credible excuse is made out* (per Salmon LJ in Allen at 561) (emphasis added)

[33] In *TP Guan Heng Sdn Bhd & Anor v. Loh Soo Chun* [2020] 1 LNS 288; [2020] MLJU 354, the High Court rejected the appellants' application for extension of time to file the record of appeal. There was a delay of seven weeks and three days. The High Court further stated that there was a total disregard on the appellants' part to make timely effort to proceed with their appeal and that the appellants should have put in more effort and paid attention to the case.

[34] In *Prolink Marketing Sdn Bhd v. CL Resources Sdn Bhd* [2020] 1 LNS 1431; [2020] MLJU 1583, the High Court rejected the appellant's application for extension of time to file the record of appeal and stated that a delay of 151 days amounted to an inordinate delay and there was no good reason for the delay.

[35] It must be repeated that in this case, the appellant lodged their notice of appeal on 28 February 2014 and due to the inaction on their part which went on for at least five years in total, this appeal was only registered at the High Court in 2020. Further, by the time the office of SCIT circulated the draft case stated for comments on 22 March 2016, the terms of appointment of all three members of the SCIT who heard the appeal had expired and they could no longer sign the case stated before it was forwarded to the court. The

terms of appointment of the three members of the SCIT panel who heard the appeal had expired on 15 January 2014, 31 December 2015 and 14 March 2016 respectively, as indicated on the last page of the case stated.

[36] The validity of the case stated is therefore in question. The reason is that under paras. 37 and 38 of Schedule 5 to the Income Tax Act 1967 (prior to amendment by the Income Tax (Amendment) Act 2019) a case stated must fulfil the followings:

> 37. A case stated under paragraph 34:
>
> (a) shall set forth the facts as found by the Special Commissioners, the deciding order and the grounds of their decision; and
>
> (b) shall be signed by the Special Commissioners who heard the appeal (or, if any of them are incapacitated from signing by reason of death, illness, absence or any other cause, by such of them as are able to do so).
>
> 38. When a case has been stated and signed in accordance with paragraph 37, the Clerk shall transmit it to the High Court and serve a copy of it on the parties to the proceedings in respect of which it is stated.

[37] On the face of the case stated, it can be seen that it did not satisfy the abovementioned statutory requirements. The validity of the case stated is in question due to the lack of signatures of the three members of the SCIT panel who heard the appeal. The fact that the unsigned case stated was subsequently compiled by another new SCIT members (who did not even hear the appeal) in 2020 could not cure the lack of signatures of the three members of the SCIT panel who heard the appeal due to the mandatory nature of the above provisions. Consequently, the appellant's appeal can therefore become incompetent and can be struck out. Of course, the argument on the competence of the appellant's appeal on this ground has not been fully ventilated at this stage but from the facts of the case, there is a possibility that the appellant's appeal can be rendered as incompetent.

[38] The obligation on the part of the appellant to pursue and procure the case stated is also for the reason that the respondent ought not be put in uncertainty for a long period of time even though the SCIT's decision is in their (the respondent) favour. Further, the taxes and penalties paid by the respondent are still being held by the appellant. It cannot be disputed that this prejudices the respondent financially.

[39] In *Negara Properties Sdn Bhd v. Akitek Bersekutu, Malaysia (Sued As A Firm) & Ors* [1996] 2 CLJ 923; [1995] 2 MLJ 185, the High Court explained succinctly the element of prejudice in cases of dismissal for want of prosecution as follows:

> A defendant may also establish prejudice by showing that the plaintiff's delay had caused the defendant, particularly if he is running a business, financial loss. In *Chris Smaller*'s case, Lord Griffiths clearly stated that such

prejudice was sufficient to strike out an action. His Lordship said ([1989] AC 1197 at p 1209; [1989] 1 All ER 897 at p 904; [1989] 2 WLR 578 at p 587):

> The decisions of the Court of Appeal in *President of India and Union of India v. John Shaw & Sons (Salford) Ltd* (*The Times, 27 October 1977)* and *Bridgnorth DC v. Henry Willcock & Co Ltd* (1983) CA Transcript 958 are further examples of the court taking business prejudice into account as a ground for striking out ...

His Lordship added ([1989] AC 1197 at p 1209; [1989] 1 All ER 897 at p 905; [1989] 2 WLR at p 587):

> ... there can be no doubt that if the defendants had been able to establish significant damage to their business interests, flowing directly from the culpable delay ... a judge would have been entitled to regard it as prejudice justifying striking out the action.

Similarly, Lord Denning MR in *Biss*'s case observed ([1978] 2 All ER 125 at p 131; [1978] 1 WLR 382 at p 389):

> So in the *President of India* case ... The business house was prejudiced because it could not carry on its business affairs with any confidence, or enter into forward commitments, whilst the action for damages was still in being against it.

[40] The appellant argued that since the respondent has won the appeal at the SCIT stage, the delay has caused prejudice on them instead of the respondent. The argument is unmeritorious. This court is of the considered view that it is the respondent as the taxpayer who suffers serious prejudice. It has been disclosed before this court that in the present case, the delay has caused serious commercial and financial hardships on the respondent as its financial status has been exacerbated by the proliferation of other golf courses in Johor Bahru along with the worsening economic conditions in recent times, such as the depreciation of the value of the Malaysian Ringgit.

[41] The taxes and penalties paid by the respondent ought to have been refunded by the appellant according to the decision of the SCIT, which was delivered more than six years ago. However, due to the appellant's inaction and lack of interest in this appeal, the respondent was deprived of the same and this has caused serious financial hardship on them.

[42] The respondent reveals that the golf courses and clubhouse (which formed the substance of the merits of the case before the SCIT) no longer exist in their original state as 27 out of the 36 holes in the golf courses had been sold by them. It was further highlighted that the key witnesses, especially the previous owner of the respondent, have all left the company long ago and are no longer contactable.

[43] The respondent has been deprived of the fruits of its litigation for a long period of time. The appellant's inordinate delay and the lack of appropriate explanation are unreasonable and unfair to the respondent. The appellant cannot put the blame on the SCIT. By filing a notice of appeal without following up on the case stated thereafter, the appellant had in effect used the court process to prolong the litigation knowing that they are still holding the respondent's monies. There is indeed an abuse of the court process and has caused the respondent to suffer serious prejudice.

Conclusion

[44] Premised on the above, this court granted order in terms of encl. 9. The appellant's appeal was struck out for want of prosecution.